IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/07/2003

CORAM

THE HON'BLE MR.JUSTICE M.KARPAGAVINAYAGAM
and
THE HON'BLE MR.JUSTICE S.ASHOK KUMAR

Criminal Appeal No.758 of 2000
and Criminal Appeal Nos., 775 and 924 of 2000

1. Farooq

2. Raja @ Raja Sekaran
3. Anand ... Appellants in C.A.758 of 2000

1. Mathi @ Mathiazhagan ... Appellants
2. Thiagi @ Suresh in C.A.775 of 2000

Pandy ... Appellant in
C.A.924 of 2000
-Vs-

State of Tamil Nadu,
represented by
S.I. of Police,
H-1 Police Station,
Madurai 625 001. ... Respondent in
all C.As.

Criminal Appeals filed against the judgment of conviction and sentence dated 17.08.2000 passed by the I Additional Sessions Judge and Chief Judicial Magistrate at Madurai in S.C.No.262 of 1994.

!For Appellants in C.A.758/2000: Mr.K.Jegannathan

^For Appellants in C.A.775/2000: Mr.T.Munirathina Naidu

For Appellant in C.A.924/2000 :Mr.Gopalakrishnalakshmanarajuu

For Respondent : Mr.E.Raja, Addl.Public Prosecutor

:JUDGMENT

(JUDGMENT of the Court was delivered by
S.ASHOK KUMAR, J.)

The appellants in all the above three appeals were accused in S.C. No.262 of 1994 on the file of the I Additional Sessions Judge, Madurai, and they have been convicted and sentenced as follows:-

(i) A1 to undergo R.I. for one year for the offence under Section 14 8 I.P.C. and imprisonment for life under Section 302 I.P.C.;

(ii) A3 to undergo R.I. for one year under Section 148 I.P.C. and R.I. for two years under Section 324 I.P.C.;

(iii) A5 to undergo R.I. for one year under Section 148 I.P.C. and R.I.for five years and to pay a fine of Rs.1,000/- in default to undergo S.I. for six months under Section 307 I.P.C.;

(iv) A2, A6 to A9 to undergo R.I. for six months under Section 147 I.P.C.

2. The brief facts of the prosecution case are as follows:-

At Madurai, cricket matches were conducted between local teams in the Race Course Ground for the past two years prior to the date of occurrence. On 29.12.1991, there was a match between the Armed Reserve Police Line team and Madurai Krishnapuram Colony team. P.W.1 Gopal, deceased Ramesh and P.W.6 Ilanchelian and their friends went to the Race Course ground to witness the match. Krishnapuram Colony team scored 125 runs in 20 overs. The Armed Reserve Police Line team, which played next, scored 108 runs in 17 overs. Since it became 6'O clock in the evening, Armed Reserve team expressed its inability to play continually, but the organizing committee insisted the Armed Reserve team to continue their playing as there were only another three overs to be played. But, the Armed Reserve team made a walk out. Therefore, Krishnapuram Colony team was declared to have won the match. P.W.1 and the deceased entered into the play ground in support of the Armed Reserve team and beat A2 Farooq, the Umpire. At 06.10 p.m., when P.W.1 and the deceased Ramesh were walking near Thamaraithotti, A1 Pondy, A2 Farooq, A3 Ramanathan, A4 Babu alias Richa rdbabu, A5 Mathi alias Mathialagan, A6 Kaalai, A7 Thiagi alias Ramesh, Bala alias Balachandran, A8 Raja alias Rajasekar and A9 Anand attempted to beat them, but they escaped. Thereafter, P.W.1 and the deceased went to the shop of P.W.1. After talking with friends at his shop, P.W.1 Gopal, P.W.2 Sankar Kannan, P.W.3 Shanmugam, P.W.4 Raja, the deceased Ramesh and three others went to P.W.4's house to take money from P.W.4's house for their food. When they were passing through D.R.O. colony around 07 .15 p.m., all the abovesaid accused attacked them. A1 attacked the deceased on his left neck with a knife. When he attempted to stab the deceased again, the deceased prevented it with his left hand and therefore, sustained injuries on his left hand. A5 Mathi alias Mathialagan stabbed P.W.6 Illanchelian on his right side chest with a knife and caused injury. A3 Ramanathan stabbed on the back of P.W.1 Gopal and caused injury. Other accused pelted stones at them. The deceased Ramesh after sustaining stab injuries ran towards west and fell down. At that time, street lights and house lights were burning. P.W.1 Gopal fled from the scene of occurrence. With the help of his neighbouring shop owner, P.W.13 Vethanayagam, P.W.1 Gopal got admitted at the Government Rajaji Hospital, Madurai. P.W.6 was also admitted at the same hospital. The deceased Ramesh was brought to the Government Hospital. On the same day at 07.45 p.m. he died. The death report to the Police is Ex.P.15.

(ii) P.W.15 Mathusudanan, Sub Inspector of Police, Thallakulam Police Station, who received a telephonic message from the Outpost Police Station of the Government Hospital, went there on the same day and collected Ex.P.15 death report and recorded Ex.P.1 complaint from P. W.1 Gopal at 09.15 p.m. At 10.00 p.m., he registered a case in Cr.No.1685 of 1991 under Sections 147, 148, 341, 323, 324, 307 and 302 I.P.C. Ex.P.16 is the First Information Report. He sent the original of the F.I.R. to the Court and copies to the higher officials.

(iii) P.W.19 Navaneethakrishnan, Inspector of Police, Thallakulam Police Station, who received the copy of the F.I.R., proceeded to the scene of occurrence. On 29.12.1991 at 10.45 p.m., in the presence of P.W.5 Remijeas and one Chidambaram, he prepared Ex.P.2 observation mahazar and drew Ex.P.20 rough sketch. At 11.00 p.m., he recovered M. O.7 bloodstained cement flooring pieces and M.O.8 sample cement flooring pieces under the cover of mahazar Ex.P.4. At 11.15 p.m., he recovered M.O.5 bloodstained earth and M.O.6 sample earth under the cover of Ex.P.3 mahazar. At the scene of occurrence, he examined P.W.5 Remijeas, Chidambaram and one Gurunathan. On 30.12.1991 at 06.00 a.m., he went to the Government Rajaji Hospital and examined and recorded the statement of, P.W.6 Ilanchelian and recovered M.O.9 bloodstained lungi produced by him. He took P.W.1 Gopal from the ward to mortuary. Between 07.00 a.m. and 10.00 a.m., he conducted inquest on the body of the deceased Ramesh in the presence of panchayathars. Ex.P.21 is the inquest report. He also recovered M.O.2 bloodstained pant produced by P.W.1 Gopal, M.O.3 bloodstained lungi and M.O.4 bloodstained shirt produced by P.W.4. He examined and recorded the statements of, P.W.9 Abuthakir, P.W.13 Vedanayagam, P.W.15 the Sub Inspector of Police and other witnesses. He sent Ex.P.13 requisition through P.W.11 Muthuraj, Police Constable, to conduct postmortem on the body of the deceased.

(iv) P.W.14 Dr. Thiyagarajan, Professor of Forensic Medicine, Madurai Medical College, conducted postmortem on the body of the deceased on 30.12.1991 at 10.15 a.m. and found the following injuries:-
"1. Transversely oblique stab injury lower 3rd of left side neck 3.5 cms x .5 cm x entering the neck muscles. Margins regular, both ends pointed. Outer end situated 11 cms from the left ear. On dissection; the wound passes obliquely downwards, inwards and towards right cutting the neck muscles and left side jugular vein and carotid vessel through & through, cutting the posterior wall of wind pipe obliquely downwards 3 cms xx line ear x through & through and piercing the right carotid sheeth carotid. 25 cm x linear x entering the lumen. Surrounding area contains 550 grams of blood clots. Wind pipe contains froth blood clots at the lower portion.
2. A vertically oblique incised wound left hand dorsum below the left index finger 3 cms x .25 cm. bone deep with tailing towards the wrist 2 cms.
3. Irregular abrasion front of lower chest 4 x 3 cms with few mud particles."

He also gave an opinion that the deceased would appear to have died of haemorrhage and shock as a result of external stab injury No.1 with corresponding internal injuries (injury to the left jugular vein? carotid, wind pipe and right carotid) sustained by him 12 to 16 hours prior to autopsy.

The postmortem certificate issued by P.W.14 is Ex. P.14.

(v) Continuing his investigation, on 30.12.1991 at 10.00 p.m., P.W.1 9 the Inspector of Police arrested A7 Thiyagi alias Ramesh alias Suresh Kumar, Bala alias Balalchandran-juvenile accused, A8 Raja alias Rajasekaran and A9 Anand at Vellaikal Mandapam near Muntru mavadi and sent them to the judicial custody. On 31.12.1991, P.W.19 examined some witnesses and on 01.01.1992, he examined P.W.8 Muthuramasubbu, Police Constable, P.W.11 Muthuraj, Police Constable and P.W.16 Dr. Pandiarajan and recorded their statements. He recovered M.O.10 bloodstained lungi, M.O.11 shirt and M.O.12 waist-cord of the deceased from P.W.11 Muthuraj, Police Constable. On 02.01.1999 at 07.00 p.m., he arrested A1 Pandi near Karthik Theatre at Puthur in the presence of P.W.7 Pancharam. A1 volunteered to give a confession statement, the admissible portion of which is Ex.P.5. A1 took P.W.19 and the witnesses to Saravana Clinic old building near Thamaraithottam and produced M.O.1 knife, which was seized under the cover of Ex.P.6 mahazar. Thereafter, A1 was sent to remand. On 08.01.1992 at 05.00 a.m., P.W.18 the Sub Inspector of Police, Thallakulam Police Station arrested A5 Mathi alias Mathialagan at Madurai town Bikkara Bus stop and sent him for judicial remand. On 09.01.1992, P.W.19 the Inspector of Police sent a requisition to the Magistrate's Court to send all the case properties for chemical analysis. On 31.01.1992 at 07.30 p.m., at A. Vallalapatti Bus Stop, he arrested A6 Kaalai and sent him for judicial custody. After completion of investigation, on 29.04.1992, he filed charge-sheet against the accused under Sections 147, 148, 336, 326, 307, 30 2 r/w 149 I.P.C.

3. On behalf of the prosecution, P.Ws. 1 to 19 were examined, Exs.P.1 to P.21 were filed and M.Os.1 to 13 were marked.

4. When all the accused were questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, all the accused stated that they did not know and that the evidence of the prosecution witnesses was false and they were implicated in a false case. No oral or documentary evidence was produced on behalf of the accused.

5. The learned Counsel appearing for the appellants would contend that any of the accused was not earlier known to the prosecution witnesses, particularly A1 was not known to the complainant, and their names have been impleaded after due deliberation since the deceased happens to be the son of an Assistant Commissioner of Police and the presence of the witnesses at the place of occurrence was unnatural and the deceased party were the aggressors,

who might have come to assault the accused and there are several contradictions in the evidence of the prosecution witnesses, and therefore, all the appellants should be acquitted.

6. But, the contention of the learned Additional Public Prosecutor is that P.W.1 and P.W.6 are the injured eyewitnesses, whose presence in the scene of occurrence cannot be denied and the F.I.R. has been lodged immediately

after the occurrence and there is no delay in the F.I.R. reaching the Court. Apart from the two injured eye-witnesses, three other eyewitnesses have also been examined to prove the prosecution case and hence, he submits that the appeal should be dismissed.

7. We gave our anxious consideration to the rival contentions of the learned Counsel appearing for the appellant and also the learned Additional Public Prosecutor, and also perused the materials available on record.
8. P.W.1, P.W.6, the deceased and others have gone to witness a cricket match conducted on 29.12.1991 between the Armed Reserve Police Line team and Krishnapuram Colony Team at the Race Course ground. Krishnapuram Colony team had scored 125 runs in 20 overs. When the Armed Reserve Police Line team played next, they were able to score 108 runs in 17 overs and they refused to play the remaining three overs due to failure of light. The organizing committee insisted that the match should be continuously played, but the Armed Reserve Line Team made a walk out from the match and therefore, A2 Farooq declared that Krishnapuram colony team has won the match, for that P.W.1 and the deceased beat A2. Around 06.10 p.m., when P.W.1 and the deceased were walking near Thamaraithotti, all the accused tried to beat them, but they escaped and ran away. After coming to the shop of P.W.1, P.W.1 to P.W.4, P.W.6, the deceased and some others had a chat at the shop of P.W.1 and they wanted to take food at Pudur. Since they had no money, they wanted to go to P.W.4's house, who was willing to take money from his house for their food. For the said purpose, P.W.1 to P.W.4 and P.W.6 and the deceased went to D.R.O. colony around 07.15 p.m. According to the evidence of P.W.1 to P.W.4 and P.W.6, all the accused were sitting at Gurunathan Tea stall and on seeing them, they shouted that the prosecution witnesses have come from another area to attack the people living in their area and so saying, the accused attacked P.W.1, P.W.6 and the deceased. According to the evidence of P.W.1 to P.W.4 and P.W.6, A1 Pondy is said to have inflicted stab injury on the left neck of the deceased with a knife and when he attempted to stab again, the deceased Ramesh prevented him with his left hand and sustained injury on the left hand. A3 Ramanathan stabbed on the back of P.W.1 Gopal with a knife and caused an injury. A5 Mathi alias Mathialagan stabbed P.W.6 Illanchelian on his right chest with a knife and caused injury. After receipt of the injuries, the deceased ran for some distance and fell down. P.W.1 Gopal with the help of P.W.13 Vethanayagam, neighbouring shop owner, got admitted in the Government Hospital at 0830 p.m. The deceased was taken to the Government Hospital, where he died at 07.45 p.m. and the death intimation is Ex.P.1 5. P.W.6 got admitted in the hospital at 07.40 p.m. for the injuries sustained by him.

9. As far as the overt-acts of A1, A3 and A5 with regard to the assault on the deceased, P.W.1 and P.W.6 are concerned, it is uniform in the evidence of P.W.1 to P.W.4 and P.W.6, among whom P.W.1 and P.W.6 are injured eyewitnesses. There is also no material contradiction when the evidence of P.W.1 to P.W.4 and P.W.6 is compared with Ex.P.1 complaint lodged with the Police by P.W.1 at 09.15 p.m. on the same day. Based on Ex.P.1 complaint, a case has been registered at 10.00 p.m. The F.I.R. has reached the Magistrate's Court by 01.00 a.m. on 30 .12.1991, and thus there is no delay in lodging the complaint or the F.I.R. reaching the Court.

10. P.W.1 Gopal has categorically admitted that two days prior to the occurrence, he came to know about A1 as Thiruvalluvar Nagar Pondy. The other eyewitnesses have also claimed that they know A1 already.

11. The contention of the learned Counsel appearing for the appellants is that when P.W.6 Illanchelian was admitted in the hospital at 0 7.40 p.m. on 29.12.1991, there is no reason for the Police for not getting a complaint from him, but on the other hand, the Police have obtained a complaint from P.W.1 Gopal, who was admitted in the hospital only at 08.30 p.m., which would only show that the Police were interested in registering a case through P.W.1 Gopal, because the accused were not known to P.W.6 Illanchelian. In support of his contention, the learned Counsel appearing for the appellants would cite an endorsement made by the Doctor in Ex.P.7 case sheet wherein it is mentioned that the injuries were caused by unknown persons to P.W.6. A perusal of Ex.P.7 case sheet would show that such an endorsement was made by the Doctor at 07.50 p.m. after admission of the patient in the ward. Ex.P.7 case sheet also contains a copy of the accident register wherein it is stated that when the patient was admitted at 07.40 p.m., P.W.6 has categorically stated that he was assaulted by ten known persons. P.W.6 Illanchelian has sustained serious injuries on his right chest and therefore, he should have been under serious treatment by Doctors after admission in the ward. The brother-in-law of P.W.6 has also made an endorsement in Ex.P.7 case sheet that he was informed about the serious condition of P.W.6. Therefore, it is probable that when P.W.6 was under treatment, the Doctor, who made the endorsement on the second page of the case sheet might have asked the brotherin-law of P.W.6 as to who caused the injuries and naturally, the brother-in-law of P.W.6 might have told that he does not know the assailants. The reason for getting Ex.P.1 complaint from P.W.1 Gopal may be the time when P.W.15 Sub Inspector of Mathusuthanan obtained a message through phone and thereafter went to the Government Hospital where Ex.P.1 complaint was recorded. According to P.W.15, he received a phone message at 08.45 p.m. and also received Ex.P.15 death intimation at 09.00 p.m. and thereafter, went to the hospital where he found that P.W.1 and P.W.6 were admitted for treatment. Since the injuries sustained by P.W.6 was serious in nature, he could have been attended by the Doctors, and therefore, P.W.15 got a statement from P.W.1 Gopal, who was also an in-patient in the hospital and who sustained lesser simple injuries. No motive could be attributed for getting a complaint from P.W.1 and not from P.W.6. In the circumstances as narrated above, there is nothing wrong on the part of P.W.15 the Sub Inspector of Police in getting Ex.P.1 complaint from P.W.1 Gopal. The contention of the learned Counsel appearing for the appellants that P.W.6 Ilanchelian has informed the Doctor that he was assaulted by unknown persons is also untenable, because, the said endorsement was made by the Doctor at 07.50 p.m., whereas in the a ccident register recorded at 07.40 p.m., P.W.6 Illanchelian has categorically stated that he was assaulted by ten known persons.

12. Another important circumstantial evidence in this case is the arrest of A1 and recovery of knife, M.O.1 in pursuance of a confession made by him. The occurrence has taken place on the night of 29.12.19 91 around 07.15 p.m. On 02.01.1992, at 07.00 p.m., in the presence of P.W.7 Sriram and one Rameshthilakan, P.W.19 the Inspector of Police arrested A1 and recorded his

confession, the admissible portion of which is Ex.P.5. In pursuance of the said confession, A1 has taken P.W.19, the Inspector of Police and the witnesses to a out-house of Saravana Cleaners at Lakshmi Theatre Road and produced M.O.1 bloodstained knife which was seized under the cover of Ex.P.6 mahazar. When M.O.1 knife was sent for chemical analysis along with other case properties, the chemical examiner has found blood, as seen from Ex.P.11 chemical examiner's report of the forensic laboratory. Ex.P.12 serological report would further show that the blood deducted in M.O.1 knife belongs to human 'B' group. The serological report would further show that M.O.5 bloodstained earth and M.O.11 shirt of the deceased contained the same blood group, which would conclusively prove that M.O.1 knife was used for committing the murder of the deceased Ramesh. This circumstantial evidence is in addition to the ocular testimony of the evidence of P.W.1 to P.W.4 and P.W.6, among whom, P.W.1 and P.W.6 are injured eye-witnesses. There is no delay in lodging the complaint or registering the complaint or the F.I.R. reaching the Court.

13. Since all the accused have no pre-plan to attack the deceased Ramesh or P.W.1 Gopal and P.W.6 Illanchelian and the occurrence has taken place out of sudden quarrel, charges under Section 148 I.P.C. are not maintainable and A1, A3 and A5 are liable for punishment for their individual act, since there was no common intention and all the accused have not assembled for an unlawful object. When all the accused were sitting in a tea stall, none of them could have expected that the deceased and the witnesses will come to the scene of occurrence and therefore, there was no pre-plan between the accused to commit the crime. Therefore, there was neither common intention nor common object to attack the deceased and P.W.1 and P.W.6.

14. As regards the other overt-acts of the other accused, A2, A4, A6 to A9 pelted stones resulting in any damage to the property, there is no evidence. Therefore, the conviction and sentence imposed on A2, A6 to A9 for offences under Section 147 I.P.C. are set aside. The convictions of A1 and A3 under Sections 148 I.P.C. is set aside. They are acquitted of the said charge. The bail bond executed by the accused shall stand cancelled. The conviction and sentence imposed on A1 for offence under Section 302 I.P.C., A3 for offence under Section 324 I.P.C. and A5 under Section 307 I.P.C. are confirmed The trial Court is directed to take steps to secure the custody of the A5 to undergo the remaining period of sentence. This Criminal Appeal is partly allowed.

Index:Yes
Internet:Yes

To

1. The I Addl. Sessions Judge-cum-Chief Judl. Magistrate,
Magistrate, Madurai.

2. Thro' The Principal Sessions Judge, Madurai.

3. The Superintendent, Central Prison, Madurai.

4. The Superintendent, Central Prison, Palayamkottai.

5. The Public Prosecutor, High Court, madras.

6. The Inspector of Police, H1 Thallakulam Police Station, Madurai.

7. The District Collector, Madurai.

8. The Director General of Police, Chennai.